IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.29959 of 2007
CHHOTELAL RAI
Versus

THE STATE OF BIHAR & ANR
- - - -

15. 9.7.2008 Heard.

In this petition for bail on behalf of the petitioner, the parties have filed their supplementary affidavit and counter affidavits. The recovery is of Ganja weighing 370K.Gs. from a truck near Indo-Nepalese border in the district of Motihari. The petitioner was the driver of the truck.

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The contention is that the truck or the narcotics substance was not seized at the place where the truck was intercepted and caught, rather, the vehicle with the alleged consignment along with the petitioner was brought to Patna and the seizure was made on the next date of intercepting the truck. The second contention is that the prosecution filed a petition before the Special Judge for ordering destruction of the seized substance without letting the petitioner know about the contents of the petition and when the petitioner objected to it the matter was not placed before the court and subsequently the

court was informed that the substance had already been consigned to flames. It was contended that the petitioner seriously disputed that the seized article was Ganja. The third contention was that the petitioner's brother had filed a case under the corruption Act against the complainant who was caught red handed for accepting the bribe and this is the reason for false implication of the petitioner. The last contention was that the petitioner's wife was having some ailment in her eyes and she had been referred to Shankar Netralaya, Chennai, and except the petitioner there is none in the family to take the lady to the hospital for her treatment.

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The Court by its order dated 22.5.2008 had directed the prosecution to indicate by filing a supplementary counter affidavit as to why the trial remained delayed for two years without a witness being produced in the trial court. The supplementary counter affidavit has been filed and it is indicated that on many dates the petitioner could not be produced so as to being supplied the police papers and charges to be framed against him. It was

further contended that the petitioner was really instrumental in delaying the trial and lastly made accusation against the Judge who was presiding over and sought transfer of the case from his court. The Court is satisfied about the explanation.

Coming to the merits of the case, the reason for not making search and seizure where the truck was intercepted is indicated in the complaint petition itself. As regards the filing of the petition for destruction of the seized article, the law does not have any provision to that effect yet the learned Special Public Prosecution conducting the case before the court below filed a petition for getting the seized articled destroyed. What the Department could have asked for from the Special Judge was simply an executive order of the Judge who was to depute a Magistrate so as to overseeing the destruction. The contention is that the prosecution is a biased one. The Court does not have any reason to accept the contention merely because the informant could have been an accused in a corruption case for acceptance

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of the bribe and being caught red handed. It could not be said that this is the only truth.

The recovery is huge. As such, I am not inclined to direct release of the petitioner on bail.

The petition is dismissed.

Let the trial be expedited by taking up the hearing of the case on day-to-day basis. If the learned Judge could feel any impediment he could consult Chapter XXII of the Cr. P.C. and accordingly direct the jail authority for the production of the accused and if desired, pass necessary order of sentence on the real culprit.

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Kanth

(Dharnidhar Jha, J.)